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1 **I. Introduction**

2 After filing, this patent case was reassigned to Judge Robert C. Jones under the
3 District of Nevada’s Patent Pilot Program for all further proceedings. Lead counsel for
4 plaintiff Silver State is the firm of Knobbe, Martens, Olson & Bear, LLP (the “Knobbe”
5 firm). Judge Jones’s brother-in-law, William B. Bunker, is a senior partner with the Knobbe
6 firm. Also, Judge Jones’s nephew (William Bunker’s son), Jared C. Bunker, is a partner with
7 the Knobbe firm.

8 In light of these familial relationships, and given the early stage of this suit, the Parties
9 respectfully submit that it may be prudent for Judge Jones to recuse himself from this case
10 pursuant to 28 U.S.C. § 455. In a nearly identical situation last year, involving plaintiff Silver
11 State and defendant Foursquare Labs, Inc., Judge Jones was assigned to that case under the
12 Patent Pilot Program and recused himself based on the above-identified relationships. *See*
13 Order of Recusal [Doc. 36], March 12, 2013, Case No. 2:12-cv-01308-GMN-PAL.

14 **II. Legal Standards**

15 A judge must “disqualify himself in any proceeding in which his impartiality might
16 reasonably be questioned.” 28 U.S.C. § 455(a). Recusal is appropriate when circumstances
17 that either appear to create or actually create a conflict of interest exist. 28 U.S.C. § 455(a)-
18 (b); *see also Preston v. United States*, 923 F.2d 731, 734 (9th Cir. 1991). Section 455(b) lists
19 several examples where the appearance of impartiality would reasonably be questioned to
20 warrant recusal. 28 U.S.C. § 455(b)(1)-(5); *see also Preston*, 923 F.2d at 734 (“Section
21 455(b) . . . describes situations that create an *apparent* conflict, because it provides examples
22 of situations in which a judge’s ‘impartiality might reasonably be questioned’ pursuant to
23 section 455(a).”) (citation omitted) (alteration in original). In particular, subsection (b)(5)
24 states that a judge shall recuse himself if “[h]e or his spouse, or a person within the third
25 degree of relationship to either of them . . . (ii) [i]s acting as a lawyer in the proceeding; [or]
26 (iii) [i]s known by the judge to have an interest that could be substantially affected by the
27 outcome of the proceeding.” 28 U.S.C. § 455(b)(5).

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1 The appearance of impartiality for purposes of recusal under § 455 is judged with an
 2 objective standard. *Preston*, 923 F.2d at 734. This standard involves “ascertaining ‘whether
 3 a reasonable person with knowledge of all the facts would conclude that the judge’s
 4 impartiality might reasonably be questioned.’” *Id.* (quoting *United States v. Nelson*, 718 F.2d
 5 315, 321 (9th Cir.1983)). This objective standard applies to both § 455(a) and (b). *See*
 6 *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir. 1980) (“[W]e think the test under
 7 either subsection (a) or (b) is the same, namely, whether or not given all the facts of the case
 8 there are reasonable grounds for finding that the judge could not try the case fairly, either
 9 because of the appearance or the fact of bias or prejudice.”).

10 **III. Discussion**

11 Judge Jones and William Bunker are brothers-in-law, and brothers-in-law are
 12 considered to be within the third degree of relationship under 28 U.S.C. § 455(b)(5). *See*
 13 *Mangini v. United States*, 314 F.3d 1158, 1160 (9th Cir. 2003). The Knobbe firm website
 14 lists William Bunker as a partner and patent attorney. Furthermore, Judge Jones’s nephew
 15 (William Bunker’s son) is a litigation partner with the Knobbe firm. *See* William Bunker and
 16 Jared Bunker attorney bios, available at: <http://knobbe.com/attorneys/bill-bunker>,
 17 <http://knobbe.com/attorneys/jared-bunker>. Although neither of the Bunkers is currently listed
 18 as one of the attorneys directly involved in this case, close familial relationships, one of
 19 which is within the third degree of relationship, between Judge Jones and two partners at the
 20 firm of Plaintiff’s lead counsel may reasonably call the appearance of impartiality into
 21 question. *See Mangini*, 314 F.3d at 1160. Furthermore, even assuming that all appropriate
 22 steps are taken to avoid the involvement of William or Jared Bunker in this case, there is an
 23 additional risk in hearing this case in which the judge’s close relatives’ interests, either
 24 economic or noneconomic, such as reputation, could be substantially affected by the outcome
 25 of the case. *See, e.g., Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1113-14 (5th Cir.
 26 1980).

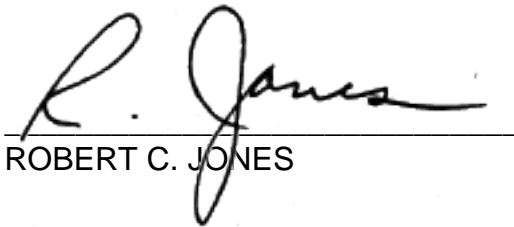
27 Potential problems or questions as to the appearance of impartiality can be harmlessly
 28 avoided by recusal or reassignment, especially at this early stage of the case. Plaintiff Silver

1 State has only recently filed an Amended Complaint in this matter, and the Defendants'
2 responses are not due until October 22, 2014. *See* Stipulation and Order Extending Time
3 [Doc. 22], September 5, 2014. Thus, there has been no substantive activity in the case up to
4 this point.

5 **IV. Conclusion**

6 For the foregoing reasons, the Parties respectfully and jointly request the Court to
7 consider whether recusal is appropriate.

8 IT IS SO ORDERED this 6th day of October, 2014.

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11 ROBERT C. JONES
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